

**BUREAU OF AUTOMOTIVE REPAIR  
INITIAL STATEMENT OF REASONS**

**HEARING DATES:**

**Tuesday, February 26, 2013 at 11:00am**  
Bureau of Automotive Repair Room 100B  
10949 North Mather Blvd.  
Rancho Cordova, CA 95670

**SUBJECT MATTER OF**

**PROPOSED REGULATIONS:**

Referee Services and Repair Cost Waiver

**SECTIONS AFFECTED:**

3340.1, 3340.4, 3340.43, and 3340.16 Articles 5.5 Chapter  
1, Division 33, Title 16, California Code of Regulations

**SPECIFIC PURPOSE OF THE REGULATORY PROPOSAL:**

The Bureau of Automotive Repair (BAR) is proposing to adopt regulations that would permit the state-contracted Referee to collect a fee to cover costs associated with performing special inspection services. This proposal helps ensure that consumers utilizing these special inspection services share part of the financial responsibility for these services. Additionally, BAR has determined that revisions to the repair cost limit are necessary to ensure that the amount is adjusted to match today's current dollar value. This action will help improve air quality by requiring more consumers to repair their high-polluting vehicles.

BAR is proposing to adopt the following regulation:

- I. **Referee Services Fee:** Pursuant to Assembly Bill 2289 (Eng, Chapter 258, Statutes of 2010), specifically Health and Safety Code (H&S) section 44014, this action allows BAR to charge a fee to offset the costs of providing Referee services.
- II. **Adjustment to the Smog Check Repair Cost Limit:** In accordance with H&S section 44017, this action seeks to adjust the repair cost limit to reflect changes in the Consumer Price Index (CPI), as published by the United States Bureau of Labor Statistics (BLS).

A detailed explanation of the changes are as follows:

1. **Amend Section 3340.1 of Article 5.5, Chapter 1, Division 33, Title 16 California Code of Regulations, as follows:**

- a. Add definition for “alternative fuel retrofit system.”

Defining an alternative fuel retrofit system is necessary because these vehicles must be inspected at the Referee. This definition provides the public with clear and concise regulations.

- b. Add definition for “average inspection cost.”

Defining the average inspection costs is necessary as it will be used as the basis for determining the cost that a consumer would pay for a particular Referee service.

- c. Add definition for “engine change.”

Defining an engine change is necessary because these vehicles must be inspected at the Referee. This definition provides the public with clear and concise regulations.

- d. Add definition for “Smog Check Referee or Referee.”

Defining the Smog Check Referee is necessary because BAR is requiring certain vehicles to receive an inspection at the Referee. This definition provides the public with clear and concise regulations.

**2. Add Section 3340.4 of Article 5.5, Chapter 1 of Division 33 of Title 16 of the California Code of Regulations as follows:**

- a. Add the title of the section to be “Smog Check Referee Services and Fees.”

- b. Add new subsection (a) to regulation.

This subsection lists the services provided by the Referee, including the following: the issuance of repair cost waivers; independent evaluation of consumers Smog Check inspection results; inspection of vehicular exhaust systems; verification of proper installation of engine changes; the inspection of direct import vehicles, vehicles with alternative fuel retrofit systems, specially constructed vehicles, and vehicles with unusual design; the issuance of a limited parts exemption; and the inspection of government fleet vehicles and vehicles that the bureau or law enforcement agency has requested a

Referee inspection. This addition is necessary to ensure that the public clearly understands what services the Referee provides.

- c. Add new subsection (b) to regulation.

This subsection directs the Referee to affix a tamper resistant label to inspected vehicles, as applicable. Additionally, the label describes vehicle information that is used by Smog Check inspectors during subsequent inspections. This addition is necessary to clarify the Referee's functions and the purpose of the tamper resistant label.

- d. Add new subsection (c) to regulation.

This subsection allows the Referee to charge a fee for providing special inspection services, directs the Referee to post a list of fees, and explains how fees are calculated. This addition is necessary to provide clear instruction to the Referee and to inform the public on the fees associated with special inspection services for their vehicles.

**3. Amend Section 3340.43 of Article 5.5 of Chapter 1 of Division 33 of Title 15 of the California Code of Regulations as follows:**

- a. Add a new subsection (a) to section 3340.43 to read, "Beginning January 1, 2013, and in accordance with 44017 (c), a vehicle owner shall qualify for a repair cost waiver only after expenditure of \$650 or more in smog check related repairs. The bureau shall revise the maximum repair cost limit based on adjustments to the Consumer Price Index (CPI), as published by the Bureau of Labor Statistics. The expenditure amount shall be increased biennially, only if the CPI results in an adjustment of at least \$25 since the last CPI adjustment. The revised repair cost limit shall be rounded to the nearest \$5."

This subsection provides consumers information necessary to determine when they may be eligible for a repair cost waiver and how and when the limit will be adjusted and calculated.

- b. Add a new subsection (b) to section 3340.43 to read, "Repairs covered by a vehicle manufacturer emissions warranty shall not apply toward the repair cost limit. Additionally, a vehicle owner shall not qualify for a repair cost

waiver if the vehicle is in need of repairs that are covered by a manufacturer's emissions warranty."

This addition is necessary to provide the public with notice that the repair cost limit is being revised and when the change will become effective.

Additionally, it informs the public that repair work covered by a manufacturer's emissions warranty does not qualify for a repair cost waiver.

These changes create new subsections (a), (b), and (c). Additionally, subsection (a) will now be paragraph (c)(1), subsection (b) will now be paragraph (c)(2), subsection (c) will now be paragraph (c)(3), and subsection (d) will now be paragraph (c)(4).

### **FACTUAL BASIS/RATIONALE:**

BAR, within the Department of Consumer Affairs, is the state agency charged with implementation and administration of the Smog Check Program (Program). The Program is designed to reduce air pollution from mobile sources, such as passenger vehicles and light-duty trucks, by requiring these vehicles to meet specific emissions standards established by BAR.

#### **Smog Check Referee:**

In furtherance of its mandate, BAR administers a statewide licensing program, which requires Smog Check stations and inspectors to become licensed with the state. Smog Check stations and inspectors rely on the *Smog Check Manual*, which is incorporated by reference in regulation, to perform proper inspections and repairs. The manual covers the vast majority of inspection procedures; however, there are certain vehicles with unusual designs or modifications that require unique inspection procedures that are not covered in the manual. BAR contracts with a separate entity known as the Smog Check Referee (Referee) for these and other consumer services that are not performed at a licensed Smog Check station. The Referee is part of the consumer protection-oriented quality assurance portion of the program required by H&S sections 44014 and 44036.

Special inspection services have been performed by the Referee since the Program's inception in 1984. However, AB 2289 authorized BAR to charge consumers a fee to offset the costs for providing these services. This regulatory action allows BAR, through the Referee, to charge consumers utilizing and benefitting from the special services. Currently, the cost associated with providing Referee services is borne by the Program through the collection of the \$8.25 certificate of compliance fee, among others.

Under this proposal, fees charged by the Referee for special inspection services that involve similar time and function as the services performed by licensed Smog Check stations will be equal to the average Smog Check inspection cost charged by licensed stations. Consumers that own a vehicle with unique or unusual designs will be required to pay a fee that is 185% of the average statewide cost for a Smog Check inspection. This divergence in cost calculation is necessary because vehicles with unique or unusual designs require more time and resources to inspect and staff with specific knowledge to determine the emissions control requirements for each vehicle being inspected. These vehicles include direct import vehicles, specially constructed vehicles, vehicles with engine changes, and vehicles equipped with alternative retrofit fuel systems. In most cases, the Referee inspects the vehicle to establish the emissions control requirements and then affixes a tamper resistant label to the vehicle. Once this label affixed, the consumer may take the vehicle to a licensed Smog Check station for future inspections.

Correlating the Referee inspection fee(s) to the average Smog Check inspection cost ensures that consumers understand how the fee was established and that it reflects what they would pay if these services were offered and performed by Smog Check stations.

The Referee is currently operated by the Foundation for California Community Colleges (FCCC) under a contract with BAR. The current Referee network consists of 31 facilities located at community college campuses.

#### Repair Cost Waiver:

H&S section 44017 establishes a process that allows eligible consumers that have failed a Smog Check inspection and have spent a minimum of \$450 on emissions-related repairs to qualify for a repair cost waiver. The repair cost waiver allows a consumer to bypass one biennial Smog Check certification requirement in order to complete the registration renewal process for a specific vehicle. This law also requires the BAR to periodically adjust the repair cost limit in accordance with the CPI, as published by the BLS. Accordingly, this regulatory action proposes to adjust the repair cost limit from \$450 to \$650 based on changes to the CPI. Under this proposal, the repair cost limit adjustment would take effect on July 1, 2013.

Moreover, this proposal establishes a process to adjust the repair cost limit on a regular basis based on procedures established in this regulatory action. Specifically, this regulation allows BAR to adjust the repair cost limit every two years, but only if the CPI results in a change of at least \$25 from the previous cost limit. The proposed adjustment criteria will ensure that the repair cost limit keeps pace with fluctuations in the CPI, avoiding incrementally small or large adjustments.

A repair cost limit that more closely represents the value of current repair costs will result in more vehicles receiving complete repairs and, therefore, a greater reduction of harmful smog-forming emissions. In calendar year 2010, the Referee issued 2,897 waivers at the \$450 repair cost limit. Applying the adjusted \$650 repair cost limit to this data could have led to approximately 2,100 more vehicles receiving repairs in order to pass a Smog Check inspection.

H&S section 44017(c) requires BAR to periodically revise the repair cost limit in accordance with the CPI. The proposed waiver adjustment was determined using the BLS All Urban Consumers Index (CPI-U). The CPI-U accounts for all the consumer goods and services purchased by urban households, representing about 87 percent of the total U.S. population, according to the BLS.

### **UNDERLYING DATA:**

- Assembly Bill 2289 (Eng, Chapter 258, Statutes of 2010)
- Bureau of Automotive Repair annual, Executive Summary Report, 2011
- Foundation for Community Colleges, *Referee Inspection Information*, February 2012
- US Bureau of Labor and Statistics, *Guide to CPI Data*, February 2012
- Bureau of Automotive Repair, *Referee Services and Fee Information Fiscal Year 2010-2011*, February 2012.
- US Bureau of Labor and Statistics, *CPI Table All Urban Consumers, All Items 1982-84=100*, February 17, 2012
- Bureau of Automotive Repair, *Cost Waiver Analysis*, February 2012

### **BUSINESS IMPACT:**

This regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the following facts, evidence, documents, or testimony:

#### **Referee Service Fee:**

This regulatory action does not create any new requirements or costs for businesses. Referee sites are currently operated by the FCCC, which is under contract with BAR. The Referee already provides special inspection services not otherwise available at licensed Smog Check stations. Under this proposal, BAR will allow the Referee to collect a fee from consumers that use their special inspection services. This fee will be used to reimburse BAR for services provided at the Referee.

#### **Consumer Price Index Adjustment for the Repair Cost Waiver:**

This regulatory action adjusts the repair cost limit in accordance with changes to the CPI to better reflect the current costs for repairs. As a result, the Smog Check repair industry may see an increase in the number of repairs for vehicles failing a Smog Check inspection. This change has the potential to increase station revenue by approximately \$427,800 (2,139 vehicles receiving additional repairs X \$200 = \$427,800) annually. This estimate is based on the difference in waivers issued in calendar year 2010 using the \$450 repair cost limit, versus the number of waivers that may have been issued if the proposed \$650 repair cost limit was in place. In calendar year 2010, the program granted 2,897 waivers at the \$450 repair cost limit. Applying the adjusted \$650 repair cost limit to this data could have led to 2,139 more vehicles receiving repairs at Smog Check stations.

### **ECONOMIC IMPACT ASSESSMENT:**

BAR has made an initial determination that the proposed regulatory action will not have any impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, the expansion of businesses, or worker safety in the State of California.

BAR has made an initial determination that the proposed regulatory action will have the following benefits to the health and welfare of California residents and state's environment:

Raising the repair cost limit will reduce the number of waivers issued to consumers. This will result in more vehicles receiving emissions-related repairs for the purpose of passing a Smog Check inspection. Thus, these changes will contribute to a reduction in smog-forming emissions.

Recent studies, such as the 2010 RAND Health Foundation report, *The Impact of Air Quality on Hospital Spending*, concluded that, "Meeting federal clean air standards would have prevented an estimated 29,808 hospital admissions and ER visits throughout California over 2005 - 2007... Failing to meet federal clean air standards cost health care purchasers/payers \$193,100,184 for hospital care alone. In other words, improved air quality would have reduced total spending on hospital care by \$193,100,184 in total."

Additionally, an ARB study, *Health Effects of Particulate Matter and Ozone Air Pollution*, November 2007,<sup>1</sup> identified significant health effects attributable to high levels of ozone. Polluting vehicles produce hydrocarbons and oxides of nitrogen which combine in the presence of sunlight to form bad ozone. The report stated that, "Ozone is a powerful oxidant that can damage the respiratory tract, causing inflammation and irritation, and induces symptoms such as coughing, chest tightness, shortness of breath, worsening of asthma symptoms, and even death. Ozone in sufficient doses increases the permeability of lung cells, rendering them more susceptible to toxins and microorganisms. The greatest risk is to those who are more active outdoors during smoggy periods, such as children, athletes, and outdoor workers. Exposure to levels of ozone above the current ambient air quality standard leads to lung inflammation and lung tissue damage, and a reduction in the amount of air inhaled into the lungs. Recent evidence has, for the first time, linked the onset of asthma to exposure to elevated ozone levels in

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<sup>1</sup> [http://www.arb.ca.gov/research/health/fs/pm\\_ozone-fs.pdf](http://www.arb.ca.gov/research/health/fs/pm_ozone-fs.pdf)

exercising children (McConnell, 2002). These levels of ozone also reduce crop and timber yields, damage native plants, and damage materials such as rubber, paints, fabric, and plastics.”

Further, a study by USEPA, *Estimating the National Public Health Burden Associated with Exposure to Ambient PM<sub>2.5</sub> and Ozone*, found that, “Ground-level ozone (O<sub>3</sub>) and fine particulate matter (PM<sub>2.5</sub>) are associated with increased risk of mortality... Using PM<sub>2.5</sub> and O<sub>3</sub> mortality risk coefficients drawn from the long-term American Cancer Society (ACS) cohort study and National Mortality and Morbidity Air Pollution Study (NMMAPS), respectively, we estimate 130,000 PM<sub>2.5</sub>-related deaths and 4,700 ozone-related deaths to result from 2005 air quality levels. Among populations aged 65–99, we estimate nearly 1.1 million life years lost from PM<sub>2.5</sub> exposure and approximately 36,000 life years lost from ozone exposure. Among the 10 most populous counties, the percentage of deaths attributable to PM<sub>2.5</sub> and ozone ranges from 3.5% in San Jose to 10% in Los Angeles. These results show that despite significant improvements in air quality in recent decades, recent levels of PM<sub>2.5</sub> and ozone still pose a nontrivial risk to public health.”

These recent studies suggest that, although California air quality has improved, additional reductions to smog-forming pollutants are necessary. Revising the repair cost limit will help ensure that an additional 2,100 vehicles each year will receive emissions-related repairs in order to pass a Smog Check inspection.

#### **SPECIFIC TECHNOLOGIES OR EQUIPMENT:**

This regulation does not mandate the use of specific technologies or equipment. The Referee already uses inspection equipment that allows them to tailor the test parameters depending on unique or varying vehicle designs.

#### **CONSIDERATION OF ALTERNATIVES:**

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:



### Referee Service Fee:

Alternative 1: BAR considered taking no action. However, no action would continue to place the cost of providing special Referee services upon the entire Program, rather than sharing these costs with the consumers who use and benefit from the services.

Alternative 2: BAR also considered a fee structure based on shop rates charged by licensed Smog Check Test and Repair stations. BAR does not currently collect data on the shop rates from all Smog Check stations. Additionally, this option would have been more complex and required more time and resources to establish the special service fee(s) than the proposed action. Ultimately, BAR determined that the proposal to tie the Referee service fee(s) to the average statewide Smog Check inspection cost would be most effective. This approach will be more easily understood by the consumers who may use and pay for these unique services to their vehicles. Additionally, this information is available can be found in the annual Bureau of Automotive Repair Executive Summary Report, which is posted readily and easily accessible to consumers on BAR's public Web page.

Alternative 3: BAR considered a fee structure based on the contract with the FCCC. This option was rejected as it would not be representative of what the service should cost if available at typical Smog Check stations.

### Consumer Price Index Adjustment for the Repair Cost Waiver:

Alternative 1: BAR considered taking no action; however, no action would leave the buying power of the existing repair cost limit far behind the price of today's repairs. The CPI has increased approximately 40% since establishment of the waiver in 1998. Additionally, H&S section 44017(c) requires BAR to periodically adjust the repair cost limit based on the CPI.